IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

Bail Appl..No. 3994 of 2007()

CC.117/2007 of J.M.F.C., RAMANKARI

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PETITIONER : ACCUSED

P.V.AJI,AGED 26 YEARS,S/N.VELAYUDHAN,
PUNNARASSERRY HOUSE,P.O.,KUNNAMKULAM,
KAKKAD,THRISSUR.

BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENTS:

STATE OF KERALA.REPRESENTED BY THE
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 3994 of 2007

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Dated this the 2nd day of July, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations in a crime registered under Section 420 I.P.C. The petitioner has not been arrested so far. Final report has already been submitted and cognizance has been taken by the learned Magistrate. Consequent to the non-appearance of the petitioner before the Investigating Officer or the learned Magistrate, the learned Magistrate has issued coercive processes to secure his presence. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. His absence earlier was not wilful. He is not shown in the F.I.R. as an accused and he had no knowledge of the pendency of the crime or the case against him. In these circumstances it is prayed that directions under Section 438 Cr.P.C. may be issued in favour of the petitioner as the petitioner apprehends that his application for bail may not be considered by the learned Magistrate favourably, in accordance with law and expeditiously.

3. I have considered all the relevant inputs. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (IR 2003 SC 4662) that powers under Section 438 Cr.P.C. can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

4. It is certainly for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

5. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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